

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ARIAD PHARMACEUTICALS, INC.,)	
MASSACHUSETTS INSTITUTE OF)	
TECHNOLOGY, THE WHITEHEAD)	
INSTITUTE FOR BIOMEDICAL)	Civil Action No. 02 CV 11280 RWZ
RESEARCH, and THE PRESIDENT AND)	
FELLOWS OF HARVARD COLLEGE)	
 Plaintiffs,)	U.S. District Judge
 v.)	Rya W. Zobel
 ELI LILLY AND COMPANY,)	
 Defendant.)	

ELI LILLY AND COMPANY'S CROSS-MOTION
FOR A PROTECTIVE ORDER

Eli Lilly and Company (“Lilly”) respectfully seeks a protective order to prevent the deposition of Dr. Richard B. Gaynor, or in the alternative, seeks a protective order limiting the scope of questioning to factual information Dr. Gaynor may have learned from Lilly during his employment with Lilly as it related to the mechanism of action of raloxifene hydrochloride (Evista®), or the mechanism of action of recombinant human activated protein C (Xigris®).

Dr. Gaynor was a professor at the University of Texas Southwestern Medical School at the time the ‘516 patent issued, and when this suit was filed. Further, he did not join Lilly until August 2002. As a scientist and long-time researcher in the area, Dr. Gaynor clearly has expertise in cellular biology, including the area of NF-κB. However, his expertise and expert opinions based thereon are not properly discoverable in a Rule 30 fact deposition. Dr. Gaynor has personally conducted no research in the area of NF-κB as part of his employment since joining Lilly. Likewise, Dr. Gaynor has conducted no

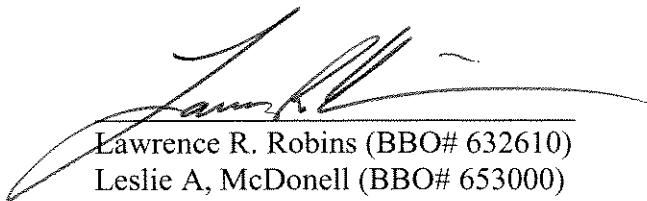
research whatsoever at anytime in his career related to the mechanism of action of either of the products at issue in this litigation. Thus, it is unclear what factual information Dr. Gaynor knows that would justify the inconvenience of a deposition. Further, Plaintiffs have refused to state the categories of information that they intend to pursue with Dr. Gaynor, and have refused to limit the deposition to non-expert areas.

Thus, Lilly requests the Court to enter a protective order to prevent Plaintiffs from taking the deposition of Dr. Richard B. Gaynor, or in the alternative, to enter a protective order limiting the scope of questioning to factual information Dr. Gaynor may have learned from Lilly during his employment with Lilly as it related to the mechanism of action of raloxifene hydrochloride (Evista®), or the mechanism of action of recombinant human activated protein C (Xigris®).

CERTIFICATION UNDER LOCAL RULE 7.1(a)(2) AND 26(c)

In a good faith effort to resolve or narrow the issues presented in this motion, counsel for Defendant Lilly has conferred with counsel for Plaintiffs. The most recent conference was held on January 7, 2005. No resolution was reached.

Respectfully submitted,



Date: January 28, 2005

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CERTIFICATE OF SERVICE

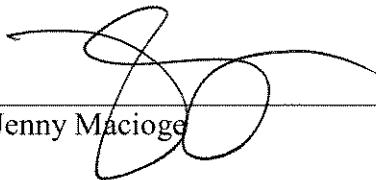
I, Jenny Macioge, hereby certify that on January 28, 2005, a true and correct copy of the foregoing: **ELI LILLY AND COMPANY'S CROSS-MOTION FOR A PROTECTIVE ORDER** was served by the indicated means to the persons at the addresses listed:

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